

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SHONDRA GLOVER, *on behalf of E.G.*, §

Plaintiff, §

v. §

Civil Action No. 3:10-CV-1996-P (BF)

COMMISSIONER OF SOCIAL §

SECURITY ADMINISTRATION, §

Defendant. §

**FINDINGS, CONCLUSIONS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

The District Court referred this case to the United States Magistrate Judge for findings, conclusions, and recommendation, pursuant to 28 U. S. C. § 636(b). Before the Court for consideration is Defendant's Motion to Dismiss, filed December 7, 2010. Plaintiff has failed to file a Response, and the time to do so has expired. The Court recommends the motion be GRANTED.

Plaintiff's application for supplemental security income benefits was denied by an Administrative Law Judge on June 30, 2009. (Def. Mot. Ex. 1.) The Appeals Council denied her request for review on July 28, 2010. (Def. Mot. Ex. 2.) Plaintiff filed this action on October 4, 2010. (Complaint 1.)


Section 405 of the Social Security Act provides that "[a]ny individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party. . . may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Secretary may allow." 42 U.S.C. § 405(g). "Mailing" is interpreted as the date of receipt by the individual of the Appeals Council's notice of denial of a request for review or of the Appeals Council's decision. 20 C.F.R.

§ 404.981. The date of receipt is presumed to be five days after the date on the notice, unless there is a reasonable showing to the contrary made to the Appeals Council. 20 C.F.R. §§ 404.901, 422.210(c).

The Appeals Council issued its notice denying Plaintiff's request for review on July 28, 2010. Therefore, Plaintiff is presumed to have received notice of the decision on August 2, 2010. Plaintiff did not file the instant civil action until October 4, 2010, more than sixty days after she received notice from the Appeals Council. Plaintiff has not shown any extraordinary circumstances that would justify extending the sixty-day period. Therefore, Plaintiff's Complaint should be dismissed as untimely filed.

The Court recommends Defendant's Motion to Dismiss be GRANTED.

SO RECOMMENDED, February 14, 2011.



PAUL D. STICKNEY
UNITED STATES MAGISTRATE JUDGE